House Legislative Analysis Section

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CERTIFICATE OF NEED REVISION

House Bill 4525 (Substitute H-3)
Sponsor: Rep. Charlie Harrison, Jr.

House Bill 5145 (Substitute H-1)
Sponsor: Rep. Michael J. Bennane

House Bill 5575 (Substitute H-2)
Sponsor: Rep. Wilbur V. Brotherton

Committee: Public Health

Senate Bill 64 (Substitute H-5)
Sponsor: Sen. Vern Ehlers
Senate Committee: Health Policy
House Committee: Public Health

First Analysis (6-2-88)

THE APPARENT PROBLEM:

For more than a year, the state's certificate of need (CON) system has been under review by a group representing providers of health care, such as hospitals, nursing homes, and doctors, major purchasers of health care, such as business and labor, and state health planners. The CON system requires health care providers to obtain the approval of state health planners before making large expenditures for new facilities, equipment, and services. The program has as an underlying assumption that controlling the supply of health facilities and services is an effective way of controlling health care costs. Even its supporters, however, agree that the CON process too often ties up hospitals and other providers in unnecessary and burdensome red tape and denies Michigan residents the use of the latest advances in medical technology, while failing to effectively control the cost of health care. Many people, particularly those in the business and labor sectors who pay much of the health care bill, are concerned that health care costs are beginning to increase dramatically once again and that an effective certificate of need program is essential to the economic welfare of the state. After much effort, a compromise has been reached on reforms to the CON system.

THE CONTENT OF THE BILL:

The four bills constitute a package aimed at revamping the state's certificate of need program, as well as other elements in the state health planning system. Among other things, the major provisions of the bill would do the following:

- Increase the threshold that determines whether a proposed capital expenditure must go through the certificate of need review process. The current $150,000 threshold would be replaced by three separate thresholds: $750,000 for a single project involving a clinical service area (i.e., related to diagnosis, treatment, and rehabilitation of patients); $1.5 million for a single project involving a nonclinical service area (e.g., renovation of physical plant); and $1.5 million for a single project involving the acquisition or utilization of nonfixed, nonmedical equipment without physical plant renovation (e.g., computers, telephones, laundry). The thresholds are contained in Senate Bill 64.

  There would be no threshold for establishing certain new health facilities, acquiring certain kinds of medical equipment, initiating new clinical services, or for changing bed capacity, which means they would be subject to CON review. However, the package would modify somewhat which facilities, equipment, services, and bed capacity changes would be subject to CON review and which would not. Furthermore, the initial lists of covered facilities, equipment, and services could be amended (items deleted or added) by the CON Standards Commission, which would be created as part of the package.

- Abolish the 54-member Statewide Health Coordinating Council (SHCC), and replace it with two separate bodies: 1) the State Health Planning Council, whose primary responsibility would be the formulation of general health policy goals and recommendations, including approval of the state health plan at least every three years; and 2) the Certificate of Need Standards Commission, whose main responsibility would be to put in place standards for use in evaluating certificate of need applications, such as standards for determining which clinical services and medical equipment would require certificates and standards for assessing the need for services, equipment, facilities, capital expenditures, and changes in bed capacity. (Standards currently adopted by state health regulators would stay in effect until the new standards were approved.) The commission would also be required to make annual assessments of the effectiveness of the CON program and at least every four years make recommendations to the legislature. The Office of Health and Medical Affairs (OHMA) would serve as staff for both bodies. House Bill 5575 contains the provisions regarding the planning council; the standards commission is created in House Bill 5145.

  The health planning council would have 24 members appointed by the governor with the advice and consent of the Senate, eight members each representing consumers, providers, and purchasers of health care. Four legislators would serve as nonvoting members, two appointed by the Speaker of the House and two by the Senate Majority Leader. The council would carry on many of the health planning duties previously belonging to the

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SHCC. The standards commission would have 15 members similarly appointed, with five each from the same three categories. One member from each category would also be a member of the planning council. The health planning council would be in the office of the governor, and the standards commission in the Department of Management and Budget.

- Allow a hospital with under 100 licensed beds to be granted a certificate of need for a short-term nursing care (or "swing bed") program that would permit up to ten licensed beds to be used for a patient who had been discharged from acute care and could not be placed in a nursing home or long-term care unit located within a 50-mile radius of his or her home. The hospital would have to agree to transfer a patient to a nursing home or long-term care unit located within 50 miles of the patient's residence within five business days of being notified, orally or in writing, that a bed is available. The bill would, generally speaking, incorporate rights guaranteed to nursing home patients into the provisions governing short-term nursing care beds. House Bill 4425 contains the swing bed provisions.
- Provide for the designation of regional review agencies to participate in the certificate of need process. To be designated, a regional agency would have to be an independent nonprofit organization governed by a broadly representive board made up of a majority of consumers and purchasers of health care and have demonstrated a willingness and ability to conduct reviews of all proposed projects requiring a certificate in its area. (The regions to be served would be the old health systems areas served by the now defunct health systems agencies or else regions specially designated by the Department of Public Health and Office of Health and Medical Affairs.) Two existing local review agencies would be grandparented until one year after standards for designating review agencies have been approved by the CON standards commission. The department and OHMA would develop the standards; designations would be made by the department. (There is no requirement that regional review agencies be designated; interested local agencies would have to apply.) Senate Bill 64 contains the regional review agency provisions.
- Clarify and reduce the number of criteria applied in CON reviews and specify when comparative reviews would be necessary. An applicant would first have to satisfy the Department of Public Health that the proposed project would meet an unmet need in the area to be served and that the completed project would be geographically accessible and efficiently and appropriately utilized. Only if those criteria were met would other criteria be applied: that the method of meeting the need was efficient and effective; that the project was the least costly way of implementing the method, in light of the alternatives; that the project would comply with quality assurance standards and other operating standards (taking into consideration the applicant's history, when appropriate); that the facility in which the services would be provided meets viability criteria (such as occupancy rates, share of patients, operating margin, etc.); and that the governing board of the institution or its advisory board is properly constituted, with a majority of consumer representatives (if a nonprofit institution). Generally speaking, comparative review would be called for when proposed projects in combination exceed the need of the planning area, and specifically in cases involving the establishment or expansion of open heart surgery, megavoltage radiation therapy, neonatal intensive care or special newborn nursery units, extracorporeal shock wave lithotripsy services, extrarenal organ transplant services, and air ambulance services. The standards commission could develop procedures to serve as alternatives to comparative review. In comparative review, willingness to participate in the federal Medicaid program would be weighted as very important.
- Simplify the CON review appeals process. The decision to grant or deny a certificate (or to approve with conditions or stipulations) would be the decision of the director of the Department of Public Health. (If the review was a comparative review, one decision would cover all the proposals under review.) A bureau within the department would issue a proposed decision addressing CON criteria to the director and the applicant. The applicant would have 60 days to file written exceptions, and the bureau would have to respond in writing, in turn, within 60 days. The director would consider the proposed decision, the exceptions, and the replies, and make a final decision within 60 days. The final decision could be appealed on the record directly to the circuit court for Ingham County. (Appeals already brought under the current CON provisions would continue under those provisions.)
- Create a New Medical Technology Advisory Committee to assist the department in identifying new technology in the earliest possible stage and put in place a procedure to allow the early use of new technology under certain circumstances and subject to certain limitations.
- Provide for expanded penalties for violations of the CON law, including the imposition of civil fines up to the amount billed for services provided in violation of the CON law and the imposition of refunds. Other penalties would include injunctive actions, compliance orders, and certificate revocations and suspensions.
- Revise fees for CON applications. The base fee would be $750 per application, and there would be an additional fee of $2,000 for projects of over $150,000 and under $1.5 million and an additional fee (over the base) of $3,500 for projects valued at $1.5 million or more. The current fees are $691 for projects up to $150,000, and $1621 for projects above that.

House Bill 5145 would amend the Public Health Code to repeal the current certificate of need provisions (Part 221) and create a new CON law (Part 222). The bill contains most of the changes to the CON process. (MCL 333.20101 et al.) Senate Bill 64 would amend the same part of the code, specifically to put in place the thresholds for determining which capital expenditures are subject to review, and to establish the process for designating regional review agencies. The two bills contain interlocking definitions. (MCL 333.22203 et al.) House Bill 4525 would allow for the short-term nursing care or swing bed program. (MCL 333.22208 and 22210) House Bill 5575 would amend the Michigan Health Planning and Resources Development Act (much of which is obsolete due to the elimination of federal health planning programs) to create the new planning council and describe the requirements of the state health plan, which generally speaking would be strictly a policy planning document and not a document containing CON criteria. The act's name would also be changed, with "health policy" substituted for "resources." (MCL 325.2001 et al.)

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The four-bill package is a compromise reform of the certificate of need process developed over the past year

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or more by representatives of health care facilities, state health agencies, business, and labor. It has been characterized as making the CON process timely, consistent, enforceable, and predictable. Even friends of the current system would not apply these adjectives to it. The package would exempt many small projects from the process entirely, would clarify standards, promote flexibility, streamline appeals, reduce litigation, close loopholes, strengthen penalties, and break down barriers to medical research. Designed and administered properly, the CON process can play an important role in restraining health care costs, guaranteeing quality services, and assuring equitable distribution of and access to health care. The package attempts to strike a balance that will allow for the meaningful regulation of new capital expenditures (at a time when there is an oversupply or underutilization of many health facilities) and at the same time not discourage innovation or deny Michigan residents the benefits of new advances in medical technology. The package also recognizes the demise of the old federal health planning system, with its subsidized local reviews, and provides for local review of major health facility proposals where there is strong local support (including financial support). It would create a new, smaller, health planning body, as well as a new commission to develop and regularly modify the standards used in the CON process. The package also allows small hospitals to participate in the federal swing bed program, whereby up to ten beds could be used for skilled nursing care when nursing home beds were not available nearby.

Against:

Some people believe that the thresholds contained in the bill for the review of capital expenditures should be indexed so that they will not become outmoded as the old threshold did quite rapidly.

POSITIONS:

The following organizations were involved in developing the legislation and have indicated their support for the bills as reported by the House Public Health Committee on 5-26-88:

The Department of Public Health

The Office of Health and Medical Affairs (within the Department of Management and Budget)

The Michigan Hospital Association

The Michigan State Medical Society

The Michigan Health Care Association

The Economic Alliance For Michigan